

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marcia Melendez, Jarican Realty Inc.,
1025 Pacific LLC, Ling Yang, Top East
Realty LLC, and Haight Trade LLC, Elias Bochner,
and 287 7th Avenue Realty LLC

Plaintiffs,

v.

The City of New York, a municipal entity,
Bill de Blasio, as Mayor of the City of New York,
Louise Carroll, Commissioner of New York City
Department of Housing Preservation &
Development, and Jonnel Doris, Commissioner of
New York City Department of Small Business
Services,

Defendants.

**DECLARATION OF PAMELA
A. KOPLIK IN SUPPORT OF
DEFENDANTS' CROSS-
MOTION FOR SUMMARY
JUDGMENT AND IN
OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY DECLARATORY
RELIEF**

20 CV 05301 (RA)

PAMELA A. KOPLIK declares, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for Defendants in the instant action.

2. I respectfully submit this declaration in opposition to Plaintiffs' motion for summary declaratory relief and in support of Defendants' cross-motion for an order and judgment dismissing the Amended Complaint pursuant to Rules 56 and 57 of the Federal Rules of Civil Procedure.

3. This declaration is intended principally to put before the Court various pieces of publicly-available information which bear on Plaintiffs' and Defendants' motions. This

declaration is also submitted to state certain facts relating to Plaintiffs' response to Defendants' requests for disclosure.

The Guaranty Law and Its Legislative History

(i) Local Law 55 of 2020

4. On April 22, 2020, during its stated meeting, the New York City Council ("City Council") introduced Local Law No. 55 of 2020 (the "Guaranty Law").¹ A true and accurate copy of Intro No. 1932 is attached as Exhibit A. A true and correct copy of the transcript of the April 22, 2020 stated meeting is attached as Exhibit B.

5. Attached as Exhibit C is a true and correct copy of the "Briefing Paper and Committee Report of the Governmental Affairs Division" dated April 29, 2020, (entitled "OVERSIGHT: The Impact of COVID-19 on Small Businesses in New York City")

6. Attached as Exhibit D is a true and correct copy of the transcript of the April 29, 2020 hearing held by the City Council's Committees on Small Business and on Consumer Affairs and Business Licensing. During this hearing, oral testimony was submitted by representatives from the New York City Department of Small Business Services ("SBS"), Real Estate Board of New York ("REBNY"), small business advocates, chambers of commerce and non-profit organizations.

7. Attached as Exhibits E1, E2, E3, E4, and E5, is a true and correct copy of the written testimony, which consists of a total of 949 pages, received by the City Council's Committees on Small Business and on Consumer Affairs and Business Licensing in connection with their April 29, 2020 hearing. The written testimony includes testimony from SBS, REBNY,

¹ The legislative history for Local Law 55 of 2020, including the legislative record documentation attached to this declaration, is available in the City Council's website at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4424954&GUID=C2A4AC16-7409-465E-B5A4-A84F6E7989FB&Options=ID|Text|&Search>.

United for Small Businesses NYC, Volunteers of Legal Service (VOLS), CHIP, and The Legal Aid Society.

8. On May 13, 2020, the City Council amended Intro. No. 1932 as Intro. No. 1932-A, a true and correct copy of which is attached as Exhibit F.

9. Attached as Exhibit G is a true and correct copy of Intro. No. 1932-A's "Plain Language Summary" document that is prepared by the City Council.

10. Attached as Exhibit H is a true and correct copy of the "Committee Report of the Governmental Affairs Divisions" dated May 13, 2020.

11. Attached as Exhibit I is a true and correct copy of the transcript of the May 13, 2020 hearing held by the City Council's Committee on Small Business. During the hearing, the Committee on Small Business approved Intro No. 1932-A by a vote of 5 to 0, with zero in the negative and no abstentions.

12. Attached as Exhibit J is a true and correct copy of transcript of the City Council's May 13, 2020 stated meeting, where Intro. No. 1932-A was passed by a vote of 44-6.

13. Attached as Exhibit K is a true and correct copy of a letter from the City's Office of the Mayor dated May 26, 2020, indicating that the Mayor signed Intro. No. 1932-A.

14. Attached as Exhibit L is a true and correct copy of the Guaranty Law (Local Law 55 of 2020), which took effect on May 26, 2020.

(ii) Local Law 98 of 2020²

15. On September 14, 2020, the City Council's Committee on Small Business held a hearing to discuss Intro No. 2083, a true and correct copy of which is attached as Exhibit

² The legislative history for Local Law 98 of 2020, including the legislative record documentation attached to this declaration, is available in the City Council's website at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4635291&GUID=CD374E63-1E3D-4C99-B482-136A8A4DF109&Options=ID%7cText%7c&Search=>

M. Attached as Exhibit N is a true and correct copy of the “Plain Language Summary” document that is prepared by the City Council for Intro No. 2083. A true and correct copy of the transcript of the September 14, 2020 hearing is attached as Exhibit O.

16. Attached as Exhibit P is a true and correct copy of the written testimony received by the City Council’s Committee on Small Business in connection with the September 14, 2020 hearing. The written testimony includes testimony from Public Advocate Jumaame Williams, SBS, REBNY, NYC Hospitality Alliance, Relief Opportunities for All Restaurants (ROAR), Margules Properties, Inc., Asian American Federation, League of Independent Theater, Council of New York Cooperatives & Condominiums, Mile High Run Club, Association for Neighborhood & Housing Development and several individuals.

17. Attached as Exhibit Q is a true and correct copy of the September 14, 2020 Committee Report of the Governmental Affairs Division.

18. Attached hereto as Exhibit R is a true and correct copy of the transcript of the September 16, 2020 stated meeting during which Local Law 98 of 2020 was preconsidered and referred to the Committee on Small Business.

19. On or about September 22, 2020, Intro 2083 was amended as Intro No. 2083-A. Attached as Exhibit S is a true and correct copy of proposed Intro No. 2083-A, which includes a section entitled “Declaration of legislative intent and findings.”

20. Attached as Exhibit T is a true and correct copy of Intro. No. 2083-A’s “Plain Language Summary” document that is prepared by the City Council.

21. A true and correct copy of the transcript from the September 23, 2020 hearing of the City Council’s Committee on Small Business to discuss Intro No. 2083-A is

attached hereto as Exhibit U. During the hearing, the Committee on Small Business approved Intro No. 2083-A by a vote of 4 to 0, with zero in the negative and no abstentions.

22. Attached as Exhibit V is a true and correct copy of the September 23, 2020 Committee Report of the Governmental Affairs Division.

23. Attached as Exhibit W is a true and correct copy of Final Intro No. 2083-A.

24. Attached as Exhibit X is a true and correct copy of the transcript of the September 23, 2020 stated meeting where Intro No. 2083-A was passed by a vote of 45-5.

25. Attached as Exhibit Y is a true and correct copy of a letter from the City's Office of the Mayor dated September 28, 2020, indicating that the Mayor signed Intro. No. 2083-A.

26. Attached as Exhibit Z is a true and correct copy of Local 98 of 2020, which took effect on September 28, 2020.

(iii) Local Law 50 of 2021³

27. On March 17, 2021, the City Council's Committee on Small Business held a hearing to discuss Intro No. 2243, a true and correct copy of which is attached as Exhibit AA. Intro No. 2243 includes a section entitled "Declaration of legislative intent and findings." Attached as Exhibit BB is a true and correct copy of the "Plain Language Summary" document for Intro No. 2243 that is prepared by the City Council. A true and correct copy of the transcript of the March 17, 2021 hearing is attached as Exhibit CC.

³ The legislative history for Local Law 50 of 2021, including the legislative record documentation attached to this declaration, is available in the City Council's website at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4835164&GUID=3320048A-1984-4A1D-9EB5-71A095F81F17&Options=ID%7CText%7C&Search=>

28. Attached as Exhibit DD is a true and correct copy of the written testimony received by the City Council's Committee on Small Business in connection with the March 17, 2021 hearing. The written testimony includes testimony from, SBS, REBNY, New York State Restaurant Association, Association for Neighborhood & Housing Development, VOLS, and several other entities and individuals.

29. Attached as Exhibit EE is a true and correct copy of the March 17, 2021 Committee Report of the Governmental Affairs Division.⁴

30. Attached hereto as Exhibit FF is a true and correct copy of the transcript of the March 18, 2021 stated meeting at which Intro No. 2243 was preconsidered and referred to the Committee on Small Business.

31. On or about March 24, 2021, Intro 2243 was amended as Intro No. 2243-A. Attached as Exhibit GG is a true and correct copy of proposed Intro No. 2243-A.

32. Attached as Exhibit HH is a true and correct copy of Intro. No. 2243-A's "Plain Language Summary" document that is prepared by the City Council.

33. A true and correct copy of the transcript from the March 25, 2021 hearing of the City Council's Committee on Small Business to discuss Intro No. 2243-A is attached hereto as Exhibit II. During the hearing, the Committee on Small Business approved Intro No. 2243-A by a vote of 5 to 0, with zero in the negative and no abstentions.

34. Attached as Exhibit JJ is a true and correct copy of the March 25, 2021 Committee Report of the Governmental Affairs Division.⁵

35. Attached as Exhibit KK is a true and correct copy of Final Intro No. 2243-A.

⁴ The report is incorrectly dated March 17, 2020 and should be dated March 17, 2021.

⁵ The report is incorrectly dated March 25, 2020 and should be dated March 25, 2021.

36. Attached as Exhibit LL is a true and correct copy of the transcript of the March 25, 2021 stated meeting where Intro No. 2243-A was passed by a vote of 43-6 with no abstentions.

37. Local Law 50 of 2021 passed by operation of law pursuant to New York City Charter, Chapter 2, Section 37. Attached as Exhibit MM is a true and correct copy of Local Law 50 of 2021, which took effect on March 31, 2021.

Deposition Testimony of Plaintiffs and Related Marked Deposition Exhibits

38. Attached as Exhibit NN is a true and correct copy of the transcript form the August 16, 2022 Rule 30(b)(6) deposition of Plaintiff 287 7th Avenue Realty, LLC (“Plaintiff 7th Avenue”) by Shlome Reifer, Managing Agent.

39. Attached as Exhibit OO1-OO2 is marked deposition Exhibit C, a June 9, 2006 Lease between 177 West 76th Street Associates and Sunburger 1 LLC, hereinafter “Lease.”

40. Attached as Exhibit PP is marked deposition Exhibit D, August 8, 2012 and July 8, 2015 letters exercising options to renew pursuant to the Lease.

41. Attached as Exhibit QQ is marked deposition Exhibit J, a March 20, 2020 letter from Steven Leicht, Chief Executive Officer of Sunburger 1, LLC, to various entities including Guardian Realty Management and Plaintiff Bochner, and serving as the Six Month Notice of Tenant’s Intention to Vacate and Surrender the Premises.

42. Attached as Exhibit RR is marked deposition Exhibit K, a June 30, 2020 letter from Mr. Leicht to Guardian Realty Management surrendering “the premises (and all fixtures, furniture and equipment therein) effective June 30, 2020.”

43. Attached as Exhibit SS is marked deposition Exhibit L, a transaction report for the subject premises from 12/30/2007 through 01/01/2021.

44. Attached as Exhibit TT is marked deposition Exhibit P, a February 21, 2021 letter from the U.S. Small Business Administration Disaster Assistance Processing and Disbursement Center regarding a disaster assistance loan received by Plaintiff 7th Avenue.

45. Attached as Exhibit UU is marked deposition Exhibit Q, a document entitled “Unanimous Consent In Lieu of Meeting” concerning an SBA Loan in the amount of \$150,000 received by Plaintiff 7th Avenue.

46. Attached as Exhibit VV is a true and correct copy of the transcript from the August 17, 2022 deposition of Elias Bochner.

47. At the August 16, 2022 Rule 30(b)(6) deposition of Plaintiff 287 7th Avenue Realty LLC by Shlome Reifer, I requested that spaces be left in the record for Plaintiffs to provide the following documents and information regarding a Small Business Association Disaster Loan (“SBA disaster loan”) obtained by Plaintiff 287 7th Avenue Realty LLC: i) the application documents; ii) an itemization of what the SBA disaster loan was used for; and iii) the amount still due and owing on the SBA disaster loan. *See* Exhibit NN at 50:6-9, 53:4-54:12. To date, Plaintiffs have failed to provide this requested documentation and information.

WHEREFORE, for the reasons stated in Defendants’ papers, Defendants respectfully request that this Court deny Plaintiffs’ motion for summary declaratory relief and grant Defendants’ cross-motion to for summary judgment dismissing the Amended Complaint .

Dated: New York, New York
September 23, 2022

/s/

PAMELA A. KOPLIK